

DW 05-155

PENNICHUCK EAST UTILITY, INC.

**Petition for Authority to Engage in Business as a Public Utility in a Limited Area of the
Town of Exeter and for Approval of Rate Schedules**

Order *Nisi* Approving Franchise Rights and Rate Schedules

ORDER NO. 24,595

March 3, 2006

I. BACKGROUND

Pennichuck East Utility, Inc. (PEU) is a regulated utility pursuant to RSA 362:2 and RSA 362:4 and serves some 4,600 customers in Atkinson, Bow, Chester, Derry, Hooksett, Lee, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown, and Windham, New Hampshire. The New Hampshire Public Utilities Commission (Commission) first authorized PEU to provide water service in 1998. *See Consumers New Hampshire Water Company*, 83 NH PUC 191 (1998).

On September 22, 2005, PEU filed a petition for approval to establish a new franchise in the Town of Exeter and charge rates in the new franchise area. PEU seeks to provide water service to approximately 74 residential dwelling units in a development known as Forest Ridge. The franchise area consists of an approximately 241 acre parcel of land off Watson Road. PEU proposes to charge the PEU-A rate¹ in the franchise. The filing was accompanied by the testimony of Bernard J. Rousseau, Vice President of Pennichuck Water Service Corporation, an affiliate of PEU.

¹ At the time of filing, this rate was \$10.69 per month for 5/8 inch service and \$3.299 per 100 cu. ft. of consumption. On February 24, 2006 the Commission issued Order No. 24,591 in PEU's rate case docket DW 05-072, which consolidated PEU's rates and established a new PEU-A rate consisting of a fixed charge of \$15.58 per month and a consumption rate of \$4.75 per hundred cubic feet.

On December 22, 2005, PEU filed a legal description of the proposed franchise as Exhibit BJR-1 (a) to the pre-filed testimony of Mr. Rousseau.

On March 1, 2006, Staff of the Commission (Staff) filed a letter recommending that PEU's petition be approved. Staff stated it had thoroughly reviewed the filing and had conducted discovery and attached PEU's data responses to its letter. In support of its recommendation, Staff stated PEU has entered into a Standard Agreement with Oakland Road, LLC, the developer of Forest Ridge, to purchase the water system and to provide water service to the proposed development. According to PEU's discovery response 1-1, the residential community is currently under construction, although the water system is completed. As of December 5, 2005, fifteen customers had already connected to the system and were taking water service. Full build-out of the community is anticipated over the next two and a half years, depending on sales of units in the development.

The Standard Agreement states that PEU will pay Oakland Road, LLC \$400 per customer taking service, to acquire the fully built water system. Staff indicated that PEU is obtaining the water system at less than original cost and, to the extent the original cost exceeds PEU's actual cost, that overage should be booked as a Contribution in Aid of Construction (CIAC). PEU's agreement with the developer also provides that PEU will invest in the cost of meters for the homes, as well as a SCADA system for the pump station.

Staff stated that the franchise area is depicted both on a plan incorporated as Exhibit BJR-1 to the testimony of Mr. Rousseau and in a subsequent legal description filed to supplement the plan. PEU has also advised the Town of Exeter Board of Selectmen of the requests made in the instant petition, and has not received any objections or concerns on the part

of the Town. After reviewing PEU's filing and discovery responses, Staff also concluded that the PEU-A tariff rate as recently approved by the Commission in PEU's rate case, DW 05-072, is appropriate, just and reasonable and recommended the Commission approve it.

Staff advised the Commission that PEU submitted letters from the New Hampshire Department of Environmental Services (DES) indicating that DES approved the Forest Ridge water supply and pumping and distribution systems. Staff concluded PEU had fulfilled the requirements as to the availability and suitability of water pursuant to RSA 374:22, III.

Based on the petition, supplemental filing, and data responses, Staff averred that PEU had demonstrated that it possesses the technical, financial, and managerial expertise to own and operate the Forest Ridge water system. Staff thus recommended the Commission grant PEU's request for franchise authority to serve the Forest Ridge development and charge PEU's PEU-A rates to the customers served by the Forest Edge water system.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:22, "[n]o person or business entity shall commence business as a public utility within this state...without first having obtained the permission and approval of the commission." The Commission shall grant requests for franchise authority and allow an entity to engage in the business as a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is for the public good. *See* RSA 374:26. In determining whether a franchise is for the public good, the Commission assesses the managerial, technical, and financial abilities of the petitioner. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000). Pursuant to RSA 378:5 and RSA 374:7, the Commission is authorized to

investigate whether rates, fares, charges or prices a utility proposes to put into force are just and reasonable. We apply these authorities to the case at hand.

We have reviewed PEU's petition, supplemental information, and Staff's recommendation in this docket and we will grant PEU's requests. We agree with Staff that PEU possesses the managerial, technical and financial abilities to operate the Forest Ridge franchise. PEU has been in the water utility business in New Hampshire since 1998 and has successfully operated water utilities in this state. PEU has secured proper easements and access to the water system by the terms of the agreement it has entered into with Oakland Road, LLC. Lastly, PEU has demonstrated that the water system meets the suitability and availability requirements of RSA 374:22, III.

We next turn to the issue of rates. PEU originally proposed to apply its then-effective PEU-A tariff rate. We note that Order No. 24,591 (February 24, 2006) in PEU's general rate case, DW 05-072, consolidated PEU's rates and thus the new PEU-A rate is applicable to all PEU customers. Staff concluded that, based on the findings in DW 05-072, the rates were just and reasonable and recommended the Commission approve the use of the new PEU-A tariff rate for the Forest Ridge franchise. We agree that the findings in DW 05-072 as to the permanent rates for PEU are applicable to all water systems owned and operated by PEU, and thus we approve the PEU-A tariff rate for the Forest Ridge development. In its petition, PEU did not specifically request a date by which to implement rates, and we will thus approve the rate on a service-rendered basis as of the effective date of this order.

As to how PEU should book its investment in the Forest Ridge water system, we note that PEU will pay \$400 per customer served for the fully built water system. Staff

recommended that, because PEU is obtaining the water system at less than original cost, the full original cost of the assets should be brought into PEU's books and the excess value over actual cost to PEU should be booked as a Contribution in Aid of Construction (CIAC). We agree that this is the appropriate accounting treatment of PEU's acquisition of the water system assets. The Commission has a long-standing practice of disallowing recovery from ratepayers of any amounts in excess of the actual cost paid for utility assets. Booking these costs as CIAC will ensure such costs are not reflected in future customer rates. Accordingly, we will require PEU to book CIAC as appropriate.

Lastly, RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing "when all interested parties are in agreement." Here, the Staff and PEU are in agreement that PEU should operate the Forest Ridge water system. Although the Town of Exeter did not participate in this docket, Exhibit BJR-1 to the pre-filed testimony of Bernard J. Rousseau indicates the Town of Exeter Planning Board signed off on the Forest Ridge development on September 30, 2004. Additionally, PEU specifically notified the Town of Exeter of the instant petition. Notwithstanding the agreement of Staff and PEU and apparent acquiescence of the Town of Exeter, we will approve the Petition on a *Nisi* basis in order to ensure that all interested parties receive notice of the proposed franchise and rates and have an opportunity to request a hearing on the matter, if they so choose. For the reasons stated above, we find that PEU's request for franchise rights relating to the Forest Ridge development is consistent with the public good and, accordingly, we approve the request. We also find the PEU-A tariff rate for the Forest Ridge development is just and reasonable and we will approve it.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Pennichuck East Utility, Inc. is authorized to operate as a public water utility in a limited area known as the Forest Ridge subdivision located in Exeter, New Hampshire; and it is

FURTHER ORDERED, that within 10 days of the completion of the sales transaction specified in the Agreement between Pennichuck East Utility, Inc. and Oakland Road, LLC, Pennichuck East Utility, Inc. will provide copies of the executed transfer documents to the Commission; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. is granted authority, pursuant to RSA 378, to charge customers of the Forest Ridge water system the PEU-A tariff rates currently in effect, on a service rendered basis, effective as of the date of this order, unless and until the Commission orders otherwise; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall cause a copy of this Order *Nisi* to be mailed to the Town Clerk in the Town of Exeter and to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than March 13, 2006 and to be documented by affidavit filed with this office on or before April 3, 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than March 20, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 27, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 3, 2006, unless Pennichuck East Utility, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall file a compliance tariff with the Commission on or before April 3, 2006, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this third day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary